

# **EXHIBIT A**

DRAFT – FOR DISCUSSION PURPOSES ONLY

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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

Master Case No. C 09-03043 JF

In re FACEBOOK PPC Advertising Litigation

**Order re Electronic Discovery**

It is hereby ORDERED:

The following protocol shall apply to the production of documents. Nothing in the procedures set forth below shall alter the parties' obligations to preserve evidence in this litigation:

**I. General.**

- 1 A. **Simple Documents.** All emails (and attachments), calendars, tasks, notes, word processing  
2 documents and presentations (“Simple Documents”) existing in native format shall be  
3 produced in electronic image form in the manner provided herein. Simple Documents that  
4 present imaging or formatting problems shall be promptly identified; the parties shall meet  
5 and confer to attempt to resolve the problems.
- 6 B. **Complex Documents.** All spreadsheets, databases and/or electronic files created in other  
7 dynamic data systems (“Complex Documents”) existing in native format shall be produced in  
8 native format. Complex Documents that present formatting or other problems shall be  
9 promptly identified; the parties shall meet and confer to attempt to resolve the problems.
- 10 C. **Hard Copy Documents.** All documents that do not exist in native format (“Hard Copy  
11 Document”) will be produced in electronic image form in the manner provided herein. Hard  
12 Copy Documents that present imaging or formatting problems shall be identified; the parties  
13 shall meet and confer to resolve the problems.  
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## II. Simple Documents

A. **Document Image Format.** All Simple Documents shall be saved electronically (or "printed") in a Group 4 compression single-page "TIFF" image that reflects how the source document would have appeared if printed out to a printer attached to a computer viewing the file. These images should also be "OCR'd" so that they are fully searchable. The parties shall produce a "load file" to accompany the images, which load file shall facilitate the use of the produced images by a document management or litigation support database system, preferably Summation. The parties shall meet and confer to the extent reasonably necessary to facilitate the import and use of the produced materials with commercially available document management or litigation support software.

B. **Document Unitization.** Each page of a document shall be electronically saved into an image. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as it existed in the original when creating the image file.

C. **Bates Numbering.** Each page of a produced document shall have a legible, unique page identifier ("Bates Number") electronically branded onto the image at a location that does not obliterate, conceal, or interfere with any information from the source document. In order to ensure that the Bates Numbers do not obscure portions of the documents, the images may be proportionally reduced to create a larger margin in which the Bates Number may be branded. There shall be no other legend or stamp placed on the document image.

D. **File Naming Conventions.** Each document image file shall be named with the unique Bates Number of the page of the document in the case of single-page TIFFs, followed by the

1 extension "TIF". Each document shall be named with a unique document identifier.  
2 Attachments shall have their own unique document identifiers.

3 E. **Production Media.** The parties shall produce documents on CD-ROM, DVD, external hard  
4 drive (with standard PC compatible interface), or such other readily accessible computer or  
5 electronic media as the parties may hereafter agree upon (the "Production Media"). Each  
6 piece of Production Media shall identify a production number corresponding to the  
7 production "wave" the documents on the Production Media are associated with (e.g., "V001",  
8 "V002"), as well as the volume of the material in that production wave (e.g., "-001", "-002").  
9 For example, if the first production wave by the parties comprise document images on three  
10 hard drives, the parties shall label each hard drive in the following manner: "V001-001",  
11 "V001-002", "V001-003". Additional information that shall be identified on the physical  
12 Production Media shall include: (1) text referencing that it was produced in [Case Docket  
13 No.], (2) the producing party's name, (3) the production date, and (4) the Bates Number  
14 range of the materials contained on the Production Media.  
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17 F. **Extracted Meta Data.** To the extent that the parties seek metadata associated with  
18 documents produced, the parties shall meet and confer to discuss the potential production of  
19 metadata on a case by case basis.

20 G. **Electronic Text Files.** To the extent a document has Extracted Text, the parties shall  
21 produce text files for produced documents reflecting the full text that has been electronically  
22 extracted from the original, native electronic files ("Extracted Text"). The Extracted Text  
23 shall be provided in ASCII text format and shall be labeled and produced on Production  
24 Media in accordance with the provisions of paragraph E. The text files will be named with  
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1 the unique Bates Number of the first page of the corresponding document followed by the  
2 extension “.txt”.

3 H. **Original Documents.** The parties shall retain the original native electronic source  
4 documents for all documents produced in accordance with this Order in a manner so as to  
5 preserve the “metadata” associated with these electronic materials in the event further review  
6 of such metadata becomes necessary. The parties agree to meet and confer with regard to  
7 any request that the parties produce copies of native electronic source documents.  
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9 **III. Complex Documents**

10 A. **Native Format.** All Complex Documents shall be produced in native format. Such files  
11 must be produced with all functions and formulae unlocked.

12 B. **Software Compatability.** The parties shall meet and confer to determine what software is  
13 necessary to open and utilize Complex Documents. The parties will provide access to such  
14 necessary software.  
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16 C. **Bates Numbering, File Naming Convention, Production Media.** Complex Documents  
17 will be numbered and produced in the same manner as described above for Simple  
18 Documents to the extent possible. If certain Complex Documents are not easily Bates-  
19 numbered, the parties shall meet and confer to discuss alternative methods for tracking or  
20 labeling produced documents.  
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**IV. Hard Copy Documents**

**A. Document Image Format.** Hard Copy Documents shall be scanned and saved electronically (or "printed") in a Group 4 compression single-page "TIFF" image that reflects how the source document would have appeared if printed out to a printer attached to a computer viewing the file. In all other respects, production of Hard Copy Documents shall mirror production of Simple Documents.

**B. Duplication.** If Hard Copy Documents also exist electronically, duplicate TIF images need not be produced. If hand-written notes, stamps, or other markings exist on the Hard Copy version of a document that also exists electronically, such documents are not duplicative and must be produced in addition to the electronic copy.

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U.S.D.J.

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# **EXHIBIT B**

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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**IN RE FACEBOOK CPC ADVERTISING  
LITIGATION**

**This Document Relates To:  
All Actions.**

Master File No. C 09-03043 JF

**PLAINTIFFS' FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS  
DIRECTED TO DEFENDANT  
FACEBOOK, INC.**

Judge: Honorable Jeremy Fogel

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of California, Plaintiffs propound the following Requests for Production of Documents upon Defendant Facebook, Inc. Plaintiffs request that Defendant respond in writing to the following Requests and produce or make available for inspection and copying the documents requested, within thirty (30) days at the offices of Finkelstein Thompson LLP, 100 Bush Street, Suite 1450, San Francisco, California,

**PLAINTIFFS' DOCUMENT REQUESTS  
DIRECTED TO FACEBOOK, INC.**

Master File No. C 09-03043 JF

1 94104.

2 **INSTRUCTIONS**

3 1. Unless otherwise indicated, the time period covered by these Document Requests  
4 is January 2007 through the present, including, but not limited to, documents created after the  
5 commencement of this action or after service of these Document Requests.  
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7 2. These Document Requests shall be deemed continuing in nature so as to require  
8 prompt and supplemental production and/or responses if additional documents and/or things are  
9 obtained or discovered between the time of initial production or response and the time of hearing  
10 or trial. Such supplemental production and/or responses are to be served upon Plaintiffs within  
11 thirty (30) days after the discovery of additional documents and/or things.  
12

13 3. You must furnish all responsive documents or things in your possession, custody  
14 or control, or which are otherwise available to you, regardless of whether such documents are  
15 possessed by you or your employees, agents, parent companies, subsidiaries, affiliates,  
16 investigators, predecessors, successors, representatives, or by your attorneys or their employees or  
17 investigators.  
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19 4. You shall produce any and all drafts and copies of each document that are  
20 responsive to any Document Request, and all copies of such documents that are not identical in  
21 every respect, including but not limited to copies containing handwritten notes, markings, stamps,  
22 or interlineations.

23 5. Pursuant to Fed. R. Civ. P. 34(b), you must produce the documents requested as  
24 they are kept in the ordinary course of business or must organize and label them to correspond  
25 with each document request to which they are submitted as being responsive. If the requested  
26 documents are maintained in a paper file, you must also produce the file folder, folder tab or  
27 container, together with all labels and notations. Documents attached to each other should not be  
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1 separated. If any portion of a document is responsive to any Document Request, then the entire  
2 document must be produced. In addition, specifically identify the location and custodian of each  
3 document produced by means of an index of production numbers.

4 6. ESI shall be produced in a form agreed to by the parties in an ESI Protocol.

5 7. In the event any document or thing called for by these Document Requests is to be  
6 withheld on the basis of a claim of privilege, Defendant must identify the nature of the privilege  
7 (including work product) which is being claimed and/or the privilege rule being invoked, and for  
8 each document withheld, Defendant must provide the following information:  
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- 10 a. the type of document;  
11 b. the subject matter of the document;  
12 c. the date of the document;  
13 d. the author(s), addressee(s), and recipient(s) of the document, and, where  
14 not apparent, the relationship of the author(s), addressee(s) and recipient(s) to one another;  
15 e. the number of pages; and  
16 f. the identification of any enclosure or attachment.  
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18 8. Production is sought regardless of whether the document purportedly was  
19 "deleted," if such document is capable of being retrieved or restored.  
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21 9. In the event that any document or thing called for by these Document Requests has  
22 been destroyed or discarded, and is incapable of being retrieved or restored, that document is to  
23 be identified by indicating the information set forth in subparagraphs a through f of paragraph 7  
24 and the following: the persons to whom the document was distributed, shown or explained; the  
25 date that the document was destroyed or discarded and the reason therefor; and the person(s)  
26 authorizing and carrying out the destruction or discarding.  
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10. If an objection is made to any of these Document Requests, the response shall state whether documents or information are being withheld from inspection and production on the basis of such objection, or whether inspection and production of the responsive documentation or information will occur notwithstanding such objection.

11. If any Document Request is objected to on grounds of over-breadth, specifically state the manner in which it is overly broad and respond to the Document Request as narrowed to conform to such objection. If you cannot respond fully, or if you object in part, to any of these Requests, you are nevertheless required to respond to the remaining portions to the extent that you are capable of doing so.

12. Special instructions against spoliation of evidence: Demand is hereby made that you take all steps as may be necessary to preserve all documents, records, data, files and items, that may be relevant to this litigation, including, without limitation, documents, records, data and files kept by electronic, electromagnetic, photographic, digital or mechanical means, whether or not contained in current, backup or archival files of personal computers and networks or on hard drives, diskettes, CD-ROM disks, magnetic tapes, back-up tapes, or Zip and Jazz cartridges. You must cease and desist from overwriting existing data, reusing backup tapes, or running data compression or defragmentation routines or “shredder programs” on any such documents, records, data or files before ensuring full compliance with the Document Requests made herein so as to prevent the inadvertent alteration or deletion of such documents, records, data and files.

## DEFINITIONS

1. “Defendant,” “you,” and “your,” means Defendant Facebook, Inc., any of its subsidiaries, divisions, subdivisions, affiliates, predecessors, sister corporations, employees, officers, directors, agents, consultants and like entities or individuals.

2. “Defendant’s website,” “your website” or “Facebook website” shall mean

1 www.facebook.com.

2 3. The terms “and” and “or” shall be construed either disjunctively or conjunctively  
3 as necessary to bring within the scope of the Document Request all responses that might  
4 otherwise be construed as outside of its scope.

5 4. As used herein, the word “any” shall include the collective as well as the singular  
6 and shall mean “each,” “all,” and “every” and such terms shall be interchangeable.

7 5. As used herein, “communication” shall mean any contact, whether written, oral or  
8 otherwise, made between two or more persons, regardless of whether such contact is or was ever  
9 rendered or recorded as a document.

10 6. “Document” shall have the broadest possible meaning accorded to it under Rule 34  
11 of the Federal Rules of Civil Procedure. A draft or non-identical copy is a separate document  
12 within the meaning of this term. The term includes any electronic, handwritten, typewritten,  
13 printed, emailed, typed, photostatic, photographic, dictated or recorded document, including, but,  
14 not limited to correspondence, emails, memoranda, notes, tapes, publications, surveys, analyses,  
15 designs, diagrams, blueprints, charts, diaries, calendars, appointment books, projections,  
16 testimony, evidence, affidavits, statements, tax returns, summaries, pamphlets, books, notebooks,  
17 prospectuses, interoffice communications, offers, notations of or relating to any sort of  
18 conversations or other communications (including but not limited to telephone conversations,  
19 emails, videoconferences or meetings), bulletins, computer printouts, teletypes, telefaxes,  
20 invoices, worksheets, and all drafts, alterations, modifications, changes or amendments of the  
21 foregoing, graphic, or manual records or representations of any kind, which are in the possession,  
22 custody or control of Defendant and/or its agents, consultants, insurers or attorneys.

23 7. As used herein, “person” or “persons” shall mean all natural persons, corporations,  
24 partnerships, or other business associations, governmental departments or agencies and all other  
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1 legal entities.

2 8. As used herein, “relate to,” “relating to,” or “concerning” any given subject means  
3 any document or documents that comprise, constitute, contain, embody, evidence, identify,  
4 reflect, state, refer to, deal with or are in any way pertinent to that subject, including but not  
5 limited to, documents concerning the preparation of other documents.  
6

7 9. A “bot” shall mean a software robot or program that runs autonomously and/or  
8 automatically and simulates human activity by, for example, clicking or simulating clicks on  
9 advertising links.

10 10. As used herein, a “billable click” is a click for which Defendant charges customers  
11 a fee.

12 11. As used herein, a “non-billable click” is a click for which Defendant does not  
13 charge customers a fee.  
14

15 12. An “invalid click” shall mean any click that is not the result of a user clicking  
16 through to the advertiser’s landing page. Invalid clicks include, but are not limited to, clicks that  
17 are the result of (a) technical problems which result in the counting of clicks that do not increase  
18 the probability of conversion (for example, those resulting from system implementation errors,  
19 incomplete clicks, improperly recorded or unreadable clicks, etc.); (b) mistaken, unintentional,  
20 inadvertent and/or double-clicks by visitors to www.facebook.com; (c) deliberate efforts to  
21 sabotage an advertiser which improperly result in the counting of and billing that advertiser for a  
22 click on a cost-per-click basis, where there is no possibility for a conversion, effectuated either  
23 through human or technological means, including various types of deceptive software programs,  
24 such as scripts or bots; and (d) phantom clicks.  
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26 13. “Click fraud” shall mean the subset of invalid clicks resulting from a competitor  
27 clicking on an advertiser’s ad in order to drive up the cost of the ad or deplete a competitor’s  
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1 budget for placing ads.

2 14. As used herein, "conversion" shall mean a visitor's taking action to purchase  
3 goods or services on a customer's website.

4 15. As used herein, "customer" shall mean a person (as defined herein) who contracted  
5 with Defendant to pay Defendant a fee each time a visitor to Defendant's website,  
6 www.facebook.com, clicked on the customer's advertisement which was placed on Defendant's  
7 website.

9 16. As used herein, "visitor" shall mean a person who visits/views Defendant's  
10 Facebook website.

11 17. "CPC" refers to "cost per click." If an ad is bid on a CPC basis, the advertiser is  
12 charged when users click on the ad and visit the advertiser's website.

13 18. "CPC advertising" shall mean advertising on a cost-per-click basis.

### 14 **DOCUMENT REQUESTS**

#### 15 **Document Request No. 1:**

16 Please produce documents sufficient to identify the number of CPC advertising customers  
17 that contracted with you per month for CPC advertising placement on your website.

#### 18 **Document Request No. 2:**

19 Please produce all versions of any form contracts used by You on your website that set  
20 forth the terms and conditions pursuant to which customers purchase CPC advertising, and  
21 documents sufficient to identify the date on which each version was implemented.

#### 22 **Document Request No. 3:**

23 Please produce all versions of the web pages which are accessible on the Facebook  
24 website under the following headings, categories and/or names: "Help Center," "Glossary of Ad  
25 Terms," "terms and conditions," "terms of use," "Statement of Rights and Responsibilities,"  
26 "Advertising Guidelines," "Ad Manager," and "Advertising Help," and documents sufficient to  
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1 identify the date on which each version was implemented.

2 **Document Request No. 4:**

3 Please produce all versions of the web pages from your website which make a  
4 representation about the terms "click" or "clicks" (including but not limited to legitimate clicks,  
5 valid clicks, illegitimate clicks, invalid clicks, fraudulent clicks, click fraud, accidental clicks,  
6 unintentional clicks, clicks made for improper purposes, click quality, cost per click, price per  
7 click), "user" or "users," and documents sufficient to identify the date on which each page was  
8 implemented and/or accessible.

9 **Document Request No. 5:**

10 Please produce all versions of the web pages from your website which are accessible to a  
11 customer placing a CPC advertising order (including all pages comprising the order form or the  
12 advertising order), and documents sufficient to identify the date on which each version was  
13 implemented.

14 **Document Request No. 6:**

15 Please produce organizational charts or other personnel records sufficient to identify your  
16 personnel responsible for interacting with actual or prospective CPC advertisers.

17 **Document Request No. 7:**

18 Please produce organizational charts or other personnel records sufficient to identify your  
19 personnel responsible for determining and/or implementing policies relating to billing for CPC  
20 advertising placement.

21 **Document Request No. 8:**

22 Please produce organizational charts or other personnel records sufficient to identify your  
23 personnel responsible for tracking clicks on customers' advertisements, including those  
24 responsible for identifying invalid clicks and for creating, implementing and revising the filtering  
25 systems.

26 **Document Request No. 9:**

27 Please produce organizational charts or other personnel records sufficient to identify your  
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1 personnel responsible for responding to complaints from CPC advertising customers about being  
2 charged for invalid clicks.

3 **Document Request No. 10:**

4 Please produce all documents sufficient to indicate the revenue and profit you generated  
5 from CPC advertising placement.

6 **Document Request No. 11:**

7 Please produce all versions of marketing or promotional materials you provided or made  
8 available to actual or prospective customers related to CPC advertising placement and date(s) on  
9 which the materials were provided or made available.

10 **Document Request No. 12:**

11 Please produce all internal communications that relate or refer to the charging for CPC  
12 advertising on your website.

13 **Document Request No. 13:**

14 Please produce all documents that relate or refer to your systems that are designed to  
15 detect invalid clicks.

16 **Document Request No. 14:**

17 Please produce all documents that relate or refer to your systems designed to pre-filter  
18 invalid clicks, *i.e.*, to remove invalid clicks before they are even seen by the filters, *e.g.*, test  
19 clicks generated by your personnel for testing purposes and clicks improperly recorded in the log  
20 files whose records have some technical problems resulting in the clicks being unreadable or  
21 meaningless.

22 **Document Request No. 15:**

23 Please produce all documents that relate or refer to your systems designed to online filter  
24 invalid clicks, including, but not limited to those which are anomaly-based (*e.g.*, if normal  
25 average clicking on a given advertisement or by a given visitor is 10 times per week and then, in a  
26 given week there are 100 clicks on that advertisement or 100 clicks by that visitor), and those  
27 which are rule-based (*e.g.*, if a double-click on a given advertisement, with the second click being  
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1 within x seconds of the first click, then, the second click is deemed invalid).

2 **Document Request No. 16:**

3 Please produce all documents that relate or refer to your systems designed to post-filter  
4 invalid clicks offline, including both automated monitoring and manual inspection stages.

5 **Document Request No. 17:**

6 Please produce all documents that relate or refer to revisions to filter parameters,  
7 introductions of new filters or conditions to filters and the removal of old underperforming filters.

8 **Document Request No. 18:**

9 Please produce all documents that relate or refer to the performance of the filters, *i.e.*, the  
10 number or percentage of clicks that the filters categorize as invalid and/or non-billable to  
11 customers.

12 **Document Request No. 19:**

13 Please produce all documents that relate or refer to your systems used to track clicks for  
14 purposes of charging your CPC customers.

15 **Document Request No. 20:**

16 Please produce all documents that relate or refer to your systems used to track the number  
17 of clicks from a single source on a given customer's advertisement.

18 **Document Request No. 21:**

19 Please produce all documents that relate or refer to your systems used to track post-click  
20 data, *i.e.*, data about conversion actions on your customers' websites, including but not limited to  
21 whether visitors visited certain pages on the advertisers' website that the advertiser marked as  
22 conversion pages.

23 **Document Request No. 22:**

24 Please produce all documents sufficient to identify on a monthly aggregate basis the  
25 number of billable clicks on advertisers' ads.

26 **Document Request No. 23:**

27 Please produce all documents sufficient to identify on a monthly aggregate basis the  
28

1 number of non-billable clicks on advertisers' ads.

2 **Document Request No. 24:**

3 Please produce all documents that relate or refer to any communications, or notification of  
4 any kind, that you received from CPC advertising customers, potential customers and/or visitors  
5 regarding charges for invalid clicks of any kind.

6 **Document Request No. 25:**

7 Please produce all documents that relate or refer to any communications with outside  
8 media sources regarding reports of CPC advertising customers being charged for invalid clicks by  
9 Facebook for CPC advertising.

10 **Document Request No. 26:**

11 Please produce all documents that you provide to CPC advertising customers and/or  
12 potential customers to assist them in selecting a daily or weekly budget for the maximum they are  
13 willing to spend per day/week for advertisement placements.

14 **Document Request No. 27:**

15 Please produce all documents that you provide to CPC advertising customers and/or  
16 potential customers to assist them in selecting a "Maximum Bid" for each click that they are  
17 willing to spend.

18 **Document Request No. 28:**

19 Please produce all documents that relate or refer to the methodology you use to determine  
20 which customer's advertisement will run at a given time among a pool of advertisers competing  
21 for advertising placements on Facebook pages.

22 **Document Request No. 29:**

23 Please produce all documents that relate or refer to credits or refunds issued to CPC  
24 Advertising customers relating to invalid clicks, whether on a customer by customer basis or in  
25 terms of any tracking and/or monitoring systems or reports.

26 **Document Request No. 30:**

27 Please produce all documents relating or referring to Plaintiff RootZoo.  
28

**Document Request No. 31:**

Please produce all documents relating or referring to Plaintiff Price.

**Document Request No. 32:**

Please produce all documents relating or referring to Plaintiff Smith.

**Document Request No. 33:**

Please produce all documents sufficient to identify any legal proceedings in any venue commenced against Facebook related to a dispute regarding billing for CPC advertising.

DATED: February 18, 2010

By: 

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*Additional Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I, Sheeree Renwick, declare:

I am employed in San Francisco County, State of California. I am over the age of 18 years and not a party to the within action. My business address is Finkelstein Thompson LLP, 100 Bush Street, Suite 1450, San Francisco, California 94104.


I hereby certify that on February 18, 2010, I caused the foregoing **PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT FACEBOOK, INC.** to be:



hand delivered via First Legal Network messenger service to the following participant:

Angela Lucia Padilla  
**Orrick, Herrington & Sutcliffe LLP**  
405 Howard Street  
San Francisco, CA 94105-2669

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on February 18, 2010.

  
Sheeree Renwick

# **EXHIBIT C**



1 COOLEY LLP  
2 MICHAEL G. RHODES (116127) (rhodesmg@cooley.com)  
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9 Attorneys for Defendant  
10 FACEBOOK, INC.

11  
12 UNITED STATES DISTRICT COURT  
13  
14 NORTHERN DISTRICT OF CALIFORNIA  
15  
16 SAN JOSE DIVISION  
17

18 In re FACEBOOK PPC Advertising  
19 Litigation,

Master File Case No. C 09-03043 JF

20 This Document relates To:  
21 All Actions.

22 **DEFENDANT FACEBOOK, INC.'S**  
23 **OBJECTIONS AND RESPONSES TO**  
24 **PLAINTIFFS' FIRST REQUEST FOR**  
25 **PRODUCTION OF DOCUMENTS**

26 Defendant Facebook, Inc. ("Facebook") hereby responds to Plaintiffs' First Request for  
27 Production of Documents ("First Request"), as follows:

28 **I. GENERAL LIMITATIONS**

Facebook asserts, whether separately set forth in the individual response to each document request below, the following general limitations ("General Limitations") to each and every instruction, definition, and document request made in the First Request.

1. Facebook's response is made to the best of Facebook's present knowledge, information, and belief. This response is at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of Facebook's employees' recollection, is subject to such refreshing of recollection, and

1 such additional knowledge of facts, as may result from Facebook's further discovery or  
2 investigation. Facebook reserves the right to make any use of, or to introduce at or in connection  
3 with any hearing or trial, documents responsive to the First Request but discovered after  
4 Facebook's initial production, including but not limited to, any documents obtained in discovery  
5 herein.

6 2. Facebook will respond to each document request with documents currently in its  
7 possession. By stating in these responses that Facebook will produce documents or is searching  
8 for documents, Facebook does not warrant that any document actually exists, but rather that it has  
9 made a diligent search and reasonable inquiry to ascertain whether documents responsive to the  
10 First Request do, in fact, exist.

11 3. To the extent that Facebook responds to the First Request by stating that it will  
12 produce documents which it or any party to this action deems to embody material that is private,  
13 business confidential, proprietary, trade secret, and/or information otherwise protected from  
14 disclosure, Facebook will do so only upon entry of and pursuant to an appropriate protective  
15 order in this action.

16 4. Facebook reserves the right to decide whether the documents produced for  
17 inspection shall be produced as they are kept in the usual course of business or shall be organized  
18 and labeled to correspond with the categories in the First Request.

19 5. Facebook reserves all objections or other questions as to the competency,  
20 relevance, materiality, privilege or admissibility as evidence in any subsequent proceeding in or  
21 trial of this or any other action for any purpose whatsoever of this response and any document or  
22 thing produced in response to the First Request.

23 6. Facebook reserves the right to object on any ground at any time to such other or  
24 supplemental requests for production as the Plaintiffs may propound involving or relating to the  
25 subject matter of the First Request.

## 26 II. GENERAL OBJECTIONS

27 Facebook asserts, whether separately set forth in the individual response to each document  
28 request below, the following general objections ("General Objections") to each and every

1 instruction, definition, and document request made in the First Request.

2 1. Facebook objects generally to each and every request on the grounds that the First  
3 Request is burdensome and oppressive in that it calls for disclosure of information protected by  
4 the attorney-client privilege, the attorney work product doctrine, or other applicable privilege or  
5 immunity. Such documents or information shall not be produced in response to any request and  
6 any inadvertent production thereof shall not be deemed a waiver of any privilege or right with  
7 respect to such documents or information or of any work product doctrine that may attach thereto.

8 2. Facebook objects generally to each and every request on the grounds that the First  
9 Request is burdensome and oppressive in that it calls for disclosure of trade secrets or other  
10 confidential or proprietary research, development, or commercial information of Facebook or any  
11 third party. Such information will be disclosed, if at all, only pursuant to a suitable protective  
12 order and, if appropriate, consent of relevant third parties.

13 3. Facebook objects generally to each and every request on the grounds that the First  
14 Request is burdensome and oppressive to the extent it seeks documents not currently in  
15 Facebook's possession, custody or control, including without limitation, those of its accountants,  
16 attorneys, or other agents, or refer to persons, entities or events not known to it, on the grounds  
17 that such requests seek to require more of Facebook than any obligation imposed by law, would  
18 subject Facebook to unreasonable and undue annoyance, oppression, burden and expense, and  
19 would seek to impose upon Facebook an obligation to investigate or discover information or  
20 materials from third parties or services which are equally accessible to the Plaintiffs.

21 4. Facebook objects generally to each and every request on the grounds that the First  
22 Request is burdensome and oppressive in that it seeks information that is irrelevant and not  
23 reasonably calculated to lead to the discovery of admissible evidence, and would result in undue  
24 burden and expense to Facebook.

25 5. Facebook objects to the terms "relate to", "relating to" and "concerning" in the  
26 First Request. These terms are overly broad, vague, ambiguous, and unintelligible, require  
27 subjective judgment on the part of Facebook and its attorneys, and would require a conclusion or  
28 opinion of counsel contrary to the protection from discovery afforded by the attorney work

product doctrine. Without waiving this objection, and subject to all other applicable objections or privileges stated herein, Facebook will produce, in response to these requests, such documents as expressly constitute or refer on their face to information relevant to the specified subject.

6. Facebook objects generally to each and every request in the First Request that seeks information relevant and related to what the Court has termed “third-party clicks.” Such requests ask for information which the Court has expressly stated is not yet at issue in this litigation and for which discovery is not yet warranted.

### III. SPECIFIC OBJECTIONS AND RESPONSES TO FIRST REQUEST

Facebook incorporates its foregoing General Limitations and General Objections into each response below. Subject to and without waiving those General Limitations or General Objections, Facebook makes the following specific objections and responses to the First Request’s document requests as follows:

#### **Document Request No. 1:**

Please produce documents sufficient to identify the number of CPC advertising customers that contracted with you per month for CPC advertising placement on your website.

#### **Response to Document Request No. 1:**

Facebook objects to this request as premature, overly broad, unduly burdensome, and exceeding the permissible scope of discovery in that the Court has dismissed all claims related to third-party clicks in its April 22, 2010 Order Granting in Part and Denying in Part Motion to Dismiss (“Order”) and no class has been certified with respect to claims for first-party clicks. This request seeks information that would be discoverable only in connection with litigating the merits of Plaintiffs’ class claims if and when class certification is granted. To the extent the information requested has some bearing on the numerosity requirement for class certification, Facebook will meet and confer with Plaintiffs on a potential stipulation to address Plaintiffs’ needs while avoiding an unnecessary and unduly burdensome production.

#### **Document Request No. 2:**

Please produce all versions of any form contracts used by You on your website that set forth the terms and conditions pursuant to which customers purchase CPC advertising, and

documents sufficient to identify the date on which each version was implemented.

**Response to Document Request No. 2:**

Facebook objects to this request as vague, overly broad, unduly burdensome, and exceeding the permissible scope of discovery. To the extent Plaintiffs are seeking discovery related to the "Extrinsic Evidence" (as defined by the Court in its Order) or similar materials, such discovery is premature because the Court has expressly found the Extrinsic Evidence to be irrelevant in its Order and has not yet ruled on whether Plaintiffs' new allegations in the Amended Complaint are sufficient to show that the Extrinsic Evidence may be considered. To the extent Plaintiffs are seeking discovery on other materials, Facebook will meet and confer further with Plaintiffs over the proper scope of any production, consistent with the Court's Order.

**Document Request No. 3:**

Please produce all versions of the web pages which are accessible on the Facebook website under the following headings, categories and/or names: "Help Center," "Glossary of Ad Terms," "terms and conditions," "terms of use," "Statement of Rights and Responsibilities," "Advertising Guidelines," "Ad Manager," and "Advertising Help," and documents sufficient to identify the date on which each version was implemented.

**Response to Document Request No. 3:**

Facebook objects to this request on the basis that it is unduly burdensome and that discovery on the "Extrinsic Evidence" (as defined by the Court in its Order) and similar materials is premature at this stage of the proceedings as the Court has expressly found the Extrinsic Evidence to be irrelevant based on the prior complaint and has not yet ruled on whether Plaintiffs' new allegations in the Amended Complaint are sufficient to show that the Extrinsic Evidence may be considered.

**Document Request No. 4:**

Please produce all versions of the web pages from your website which make a representation about the terms "click" or "clicks" (including but not limited to legitimate clicks, valid clicks, illegitimate clicks, invalid clicks, fraudulent clicks, click fraud, accidental clicks, unintentional clicks, clicks made for improper purposes, click quality, cost per click, price per

click), "user" or "users," and documents sufficient to identify the date on which each page was implemented and/or accessible.

**Response to Document Request No. 4:**

Facebook objects to this request on the basis that it is unduly burdensome and that discovery on the "Extrinsic Evidence" (as defined by the Court in its Order) and similar materials is premature at this stage of the proceedings as the Court has expressly found the Extrinsic Evidence to be irrelevant based on the prior complaint and has not yet ruled on whether Plaintiffs' new allegations in the Amended Complaint are sufficient to show that the Extrinsic Evidence may be considered.

**Document Request No. 5:**

Please produce all versions of the web pages from your website which are accessible to a customer placing a CPC advertising order (including all pages comprising the order form or the advertising order), and documents sufficient to identify the date on which each version was implemented.

**Response to Document Request No. 5:**

Facebook objects to this request on the basis that it is unduly burdensome and that discovery on the "Extrinsic Evidence" (as defined by the Court in its Order) and similar materials is premature at this stage of the proceedings as the Court has expressly found the Extrinsic Evidence to be irrelevant based on the prior complaint and has not yet ruled on whether Plaintiffs' new allegations in the Amended Complaint are sufficient to show that the Extrinsic Evidence may be considered.

**Document Request No. 6:**

Please produce organizational charts or other personnel records sufficient to identify your personnel responsible for interacting with actual or prospective CPC advertisers.

**Response to Document Request No. 6:**

Facebook objects to this request as exceeding the permissible scope of discovery to the extent it seeks information related to claims for third-party clicks, which have been dismissed by the Court. Without waiving any objections, Facebook will produce responsive information



1 related to those claims that the Court has allowed to proceed under its Order.

2 **Document Request No. 7:**

3 Please produce organizational charts or other personnel records sufficient to identify your  
4 personnel responsible for determining and/or implementing policies relating to billing for CPC  
5 advertising placement.

6 **Response to Document Request No. 7:**

7 Facebook objects to this request as exceeding the permissible scope of discovery to the  
8 extent it seeks information related to claims for third-party clicks, which have been dismissed by  
9 the Court. Without waiving any objections, Facebook will produce responsive information  
10 related to those claims that the Court has allowed to proceed under its Order.

11 **Document Request No. 8:**

12 Please produce organizational charts or other personnel records sufficient to identify your  
13 personnel responsible for tracking clicks on customers' advertisements, including those  
14 responsible for identifying invalid clicks and for creating, implementing and revising the filtering  
15 systems.

16 **Response to Document Request No. 8:**

17 Facebook objects to this request as exceeding the permissible scope of discovery to the  
18 extent it seeks information related to claims for third-party clicks, which have been dismissed by  
19 the Court. Without waiving any objections, Facebook will produce responsive information  
20 related to those claims that the Court has allowed to proceed under its Order.

21 **Document Request No. 9:**

22 Please produce organizational charts or other personnel records sufficient to identify your  
23 personnel responsible for responding to complaints from CPC advertising customers about being  
24 charged for invalid clicks.

25 **Response to Document Request No. 9:**

26 Facebook objects to this request as exceeding the permissible scope of discovery to the  
27 extent it seeks information related to claims for third-party clicks, which have been dismissed by  
28 the Court. Without waiving any objections, Facebook will produce responsive information

1 related to those claims that the Court has allowed to proceed under its Order.

2 **Document Request No. 10:**

3 Please produce all documents sufficient to indicate the revenue and profit you generated  
4 from CPC advertising placement.

5 **Response to Document Request No. 10:**

6 Facebook objects to this request on the basis that it is premature, overly broad and unduly  
7 burdensome, and exceeds the permissible scope of discovery in that the Court has dismissed all  
8 claims related to third-party clicks and no class has been certified with respect to claims for first-  
9 party clicks. This request seeks information that would be discoverable only in connection with  
10 litigating the merits of Plaintiffs' class claims if and when class certification is granted.

11 **Document Request No. 11:**

12 Please produce all versions of marketing or promotional materials you provided or made  
13 available to actual or prospective customers related to CPC advertising placement and date(s) on  
14 which the materials were provided or made available.

15 **Response to Document Request No. 11:**

16 It is Facebook's understanding based on meet and confer discussions that Plaintiffs have  
17 agreed to withdraw this request as redundant to requests 2 through 5 above. Facebook hereby  
18 incorporates its responses and objections to those requests herein.

19 **Document Request No. 12:**

20 Please produce all internal communications that relate or refer to the charging for CPC  
21 advertising on your website.

22 **Response to Document Request No. 12:**

23 Facebook objects to this request as overly broad, unduly burdensome, and exceeding the  
24 permissible scope of discovery. Specifically, to the extent this request seeks discovery on  
25 communications related to invalid clicks originating from third parties, claims for such clicks are  
26 not yet "in play" pursuant to the Order as further clarified at the May 7, 2010 Case Management  
27 Conference. (See CMC Transcript at 6:14-18.). Additionally, at the parties' telephonic meet and  
28 confer discussion on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in



1 discovery related to what the Court termed "first-party" clicks. As all claims related to third-  
 2 party clicks have been dismissed and Plaintiffs have stated they do not want any documents  
 3 related to first-party clicks, there are no documents responsive to this request.

4 **Document Request No. 13:**

5 Please produce all documents that relate or refer to your systems that are designed to  
 6 detect invalid clicks.

7 **Response to Document Request No. 13:**

8 Facebook objects to this request as overly broad, unduly burdensome, and exceeding the  
 9 permissible scope of discovery. Specifically, to the extent this request seeks information related  
 10 to the detection of invalid clicks originating from third parties, claims for such clicks are not yet  
 11 "in play" pursuant to the Order as further clarified at the May 7, 2010 Case Management  
 12 Conference. (See CMC Transcript at 6:14-18.). Additionally, at the parties' telephonic meet and  
 13 confer discussion on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in  
 14 discovery related to what the Court termed "first-party" clicks. As all claims related to third-  
 15 party clicks have been dismissed and Plaintiffs have stated they do not want any documents  
 16 related to first-party clicks, there are no documents responsive to this request.

17 **Document Request No. 14:**

18 Please produce all documents that relate or refer to your systems designed to pre-filter  
 19 invalid clicks, i.e., to remove invalid clicks before they are even seen by the filters, e.g., test  
 20 clicks generated by your personnel for testing purposes and clicks improperly recorded in the log  
 21 files whose records have some technical problems resulting in the clicks being unreadable or  
 22 meaningless.

23 **Response to Document Request No. 14:**

24 Facebook objects to this request as overly broad, unduly burdensome, and exceeding the  
 25 permissible scope of discovery. Specifically, to the extent this request seeks information related  
 26 to invalid clicks originating from third parties, claims for such clicks are not yet "in play"  
 27 pursuant to the Order as further clarified at the May 7, 2010 Case Management Conference. (See  
 28 CMC Transcript at 6:14-18.). Additionally, at the parties' telephonic meet and confer discussion

on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in discovery related to what the Court termed “first-party” clicks. As all claims related to third-party clicks have been dismissed and Plaintiffs have stated they do not want any documents related to first-party clicks, there are no documents responsive to this request.

**Document Request No. 15:**

Please produce all documents that relate or refer to your systems designed to online filter invalid clicks, including, but not limited to those which are anomaly-based (e.g., if normal average clicking on a given advertisement or by a given visitor is 10 times per week and then, in a given week there are 100 clicks on that advertisement or 100 clicks by that visitor), and those which are rule-based (e.g., if a double-click on a given advertisement, with the second click being within x seconds of the first click, then, the second click is deemed invalid).

**Response to Document Request No. 15:**

Facebook objects to this request as overly broad, unduly burdensome, and exceeding the permissible scope of discovery. Specifically, to the extent this request seeks information related to invalid clicks originating from third parties, claims for such clicks are not yet “in play” pursuant to the Order as further clarified at the May 7, 2010 Case Management Conference. (See CMC Transcript at 6:14-18.). Additionally, at the parties’ telephonic meet and confer discussion on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in discovery related to what the Court termed “first-party” clicks. As all claims related to third-party clicks have been dismissed and Plaintiffs have stated they do not want any documents related to first-party clicks, there are no documents responsive to this request.

**Document Request No. 16:**

Please produce all documents that relate or refer to your systems designed to post-filter invalid clicks offline, including both automated monitoring and manual inspection stages.

**Response to Document Request No. 16:**

Facebook objects to this request as overly broad, unduly burdensome, and exceeding the permissible scope of discovery. Specifically, to the extent this request seeks information related to invalid clicks originating from third parties, claims for such clicks are not yet “in play”

pursuant to the Order as further clarified at the May 7, 2010 Case Management Conference. (See CMC Transcript at 6:14-18.). Additionally, at the parties' telephonic meet and confer discussion on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in discovery related to what the Court termed "first-party" clicks. As all claims related to third-party clicks have been dismissed and Plaintiffs have stated they do not want any documents related to first-party clicks, there are no documents responsive to this request.

**Document Request No. 17:**

Please produce all documents that relate or refer to revisions to filter parameters, introductions of new filters or conditions to filters and the removal of old under performance filters.

**Response to Document Request No. 17:**

Facebook objects to this request as overly broad, unduly burdensome, and exceeding the permissible scope of discovery. Specifically, to the extent this request seeks information related to invalid clicks originating from third parties, claims for such clicks are not yet "in play" pursuant to the Order as further clarified at the May 7, 2010 Case Management Conference. (See CMC Transcript at 6:14-18.). Additionally, at the parties' telephonic meet and confer discussion on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in discovery related to what the Court termed "first-party" clicks. As all claims related to third-party clicks have been dismissed and Plaintiffs have stated they do not want any documents related to first-party clicks, there are no documents responsive to this request.

**Document Request No. 18:**

Please produce all documents that relate or refer to the performance of the filters, i.e., the number or percentage of clicks that the filters categorize as invalid and/or non-billable to customers.

**Response to Document Request No. 18:**

Facebook objects to this request as overly broad, unduly burdensome, and exceeding the permissible scope of discovery. Specifically, to the extent this request seeks information related to invalid clicks originating from third parties, claims for such clicks are not yet "in play"

pursuant to the Order as further clarified at the May 7, 2010 Case Management Conference. (See CMC Transcript at 6:14-18.). Additionally, at the parties' telephonic meet and confer discussion on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in discovery related to what the Court termed "first-party" clicks. As all claims related to third-party clicks have been dismissed and Plaintiffs have stated they do not want any documents related to first-party clicks, there are no documents responsive to this request.

**Document Request No. 19:**

Please produce all documents that relate or refer to your systems used to track clicks for purposes of charging your CPC customers.

**Response to Document Request No. 19:**

Facebook objects to this request as overly broad, unduly burdensome, and exceeding the permissible scope of discovery. Specifically, to the extent this request seeks information related to invalid clicks originating from third parties, claims for such clicks are not yet "in play" pursuant to the Order as further clarified at the May 7, 2010 Case Management Conference. (See CMC Transcript at 6:14-18.). Additionally, at the parties' telephonic meet and confer discussion on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in discovery related to what the Court termed "first-party" clicks. As all claims related to third-party clicks have been dismissed and Plaintiffs have stated they do not want any documents related to first-party clicks, there are no documents responsive to this request.

**Document Request No. 20:**

Please produce all documents that relate or refer to your systems used to track the number of clicks from a single source on a given customer's advertisement.

**Response to Document Request No. 20:**

Facebook objects to this request as overly broad, unduly burdensome, and exceeding the permissible scope of discovery. Specifically, to the extent this request seeks information related to invalid clicks originating from third parties, claims for such clicks are not yet "in play" pursuant to the Order as further clarified at the May 7, 2010 Case Management Conference. (See CMC Transcript at 6:14-18.). Additionally, at the parties' telephonic meet and confer discussion

on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in discovery related to what the Court termed "first-party" clicks. As all claims related to third-party clicks have been dismissed and Plaintiffs have stated they do not want any documents related to first-party clicks, there are no documents responsive to this request.

**Document Request No. 21:**

Please produce all documents that relate or refer to your systems used to track post-click data, i.e., data about conversion actions on your customers' websites, including but not limited to whether visitors visited certain pages on the advertisers' website that the advertiser marked as conversion pages.

**Response to Document Request No. 21:**

Without waiving any objections, it is Facebook's understanding based on meet and confer discussions that Plaintiffs have agreed to withdraw or defer this request.

**Document Request No. 22:**

Please produce all documents sufficient to identify on a monthly aggregate basis the number of billable clicks on advertisers' ads.

**Response to Document Request No. 22:**

Facebook objects to this request on the basis that it is premature, overly broad and unduly burdensome, and exceeds the permissible scope of discovery in that the Court has dismissed all claims related to third-party clicks and no class has been certified with respect to claims for first-party clicks. This request seeks information that would be discoverable only in connection with litigating the merits of Plaintiffs' class claims if and when class certification is granted.

**Document Request No. 23:**

Please produce all documents sufficient to identify on a monthly aggregate basis the number of non-billable clicks on advertisers' ads.

**Response to Document Request No. 23:**

Facebook objects to this request on the basis that it is premature, overly broad and unduly burdensome, and exceeds the permissible scope of discovery in that the Court has dismissed all claims related to third-party clicks and no class has been certified with respect to claims for first-

1 party clicks. This request seeks information that would be discoverable only in connection with  
 2 litigating the merits of Plaintiffs' class claims if and when class certification is granted.

3 **Document Request No. 24:**

4 Please produce all documents that relate or refer to any communications, or notification of  
 5 any kind, that you received from CPC advertising customers, potential customers and/or visitors  
 6 regarding charges for invalid clicks of any kind.

7 **Response to Document Request No. 24:**

8 Facebook objects to this request as overly broad, unduly burdensome, and exceeding the  
 9 permissible scope of discovery. Specifically, to the extent this request seeks information related  
 10 to invalid clicks originating from third parties, claims for such clicks are not yet "in play"  
 11 pursuant to the Order as further clarified at the May 7, 2010 Case Management Conference. (See  
 12 CMC Transcript at 6:14-18.). Additionally, at the parties' telephonic meet and confer discussion  
 13 on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in discovery related to  
 14 what the Court termed "first-party" clicks. As all claims related to third-party clicks have been  
 15 dismissed and Plaintiffs have stated they do not want any documents related to first-party clicks,  
 16 there are no documents responsive to this request.

17 **Document Request No. 25:**

18 Please produce all documents that relate or refer to any communications with outside  
 19 media sources regarding reports of CPC advertising customers being charged for invalid clicks by  
 20 Facebook for CPC advertising.

21 **Response to Document Request No. 25:**

22 Facebook objects to this request as overly broad, unduly burdensome, and exceeding the  
 23 permissible scope of discovery. Specifically, to the extent this request seeks information related  
 24 to invalid clicks originating from third parties, claims for such clicks are not yet "in play"  
 25 pursuant to the Order as further clarified at the May 7, 2010 Case Management Conference. (See  
 26 CMC Transcript at 6:14-18.). Additionally, at the parties' telephonic meet and confer discussion  
 27 on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in discovery related to  
 28 what the Court termed "first-party" clicks. As all claims related to third-party clicks have been



1 dismissed and Plaintiffs have stated they do not want any documents related to first-party clicks,  
2 there are no documents responsive to this request.

3 **Document Request No. 26:**

4 Please produce all documents that you provide to CPC advertising customers and/or  
5 potential customers to assist them in selecting a daily or weekly budget for the maximum they are  
6 willing to spend per day/week for advertisement placements.

7 **Response to Document Request No. 26:**

8 Without waiving any objections, it is Facebook's understanding based on meet and confer  
9 discussions that Plaintiffs have agreed to withdraw or defer this request.

10 **Document Request No. 27:**

11 Please produce all documents that you provide to CPC advertising customers and/or  
12 potential customers to assist them in selecting a "Maximum Bid" for each click that they are  
13 willing to spend.

14 **Response to Document Request No. 27:**

15 Without waiving any objections, it is Facebook's understanding based on meet and confer  
16 discussions that Plaintiffs have agreed to withdraw or defer this request.

17 **Document Request No. 28:**

18 Please produce all documents that relate or refer to the methodology you use to determine  
19 which customer's advertisement will run at a given time among a pool of advertisers competing  
20 for advertising placements on Facebook pages.

21 **Response to Document Request No. 28:**

22 Without waiving any objections, it is Facebook's understanding based on meet and confer  
23 discussions that Plaintiffs have agreed to withdraw or defer this request.

24 **Document Request No. 29:**

25 Please produce all documents that relate or refer to credits or refunds issued to CPC  
26 Advertising customers relating to invalid clicks, whether on a customer by customer basis or in  
27 terms of any tracking and/or monitoring systems or reports.

28 **Response to Document Request No. 29:**

Facebook objects to this request as overly broad, unduly burdensome, and exceeding the permissible scope of discovery. Specifically, to the extent this request seeks information related to invalid clicks originating from third parties, claims for such clicks are not yet "in play" pursuant to the Order as further clarified at the May 7, 2010 Case Management Conference. (See CMC Transcript at 6:14-18.). Additionally, at the parties' telephonic meet and confer discussion on Wednesday, May 26, 2010, Plaintiffs stated they were not interested in discovery related to what the Court termed "first-party" clicks. As all claims related to third-party clicks have been dismissed and Plaintiffs have stated they do not want any documents related to first-party clicks, there are no documents responsive to this request.

**Document Request No. 30:**

Please produce all documents relating or referring to Plaintiff RootZoo.

**Response to Document Request No. 30:**

Facebook objects to this request on the basis that it is potentially overly broad and unduly burdensome. Subject to and without waiving any objections, Facebook will produce responsive, non-privileged documents relating or referring to Plaintiff RootZoo to the extent reasonably calculated to lead to admissible evidence on the claims currently at issue pursuant to the Court's Order, including Plaintiff's account information and relevant data on clicks charged to Plaintiff on Plaintiff's advertisements.

**Document Request No. 31:**

Please produce all documents relating or referring to Plaintiff Price.

**Response to Document Request No. 31:**

Facebook objects to this request on the basis that it is potentially overly broad and unduly burdensome. Subject to and without waiving any objections, Facebook will produce responsive, non-privileged documents relating or referring to Plaintiff Price to the extent reasonably calculated to lead to admissible evidence on the claims currently at issue pursuant to the Court's Order, including Plaintiff's account information and relevant data on clicks charged to Plaintiff on Plaintiff's advertisements.

**Document Request No. 32:**



Please produce all documents relating or referring to Plaintiff Smith.

**Response to Document Request No. 32:**

Facebook objects to this request on the basis that it is potentially overly broad and unduly burdensome. Subject to and without waiving any objections, Facebook will produce responsive, non-privileged documents relating or referring to Plaintiff Smith to the extent reasonably calculated to lead to admissible evidence on the claims currently at issue pursuant to the Court's Order, including Plaintiff's account information and relevant data on clicks charged to Plaintiff on Plaintiff's advertisements.

**Document Request No. 33:**

Please produce all documents sufficient to identify any legal proceedings in any venue commenced against Facebook related to a dispute regarding billing for CPC advertising.

**Response to Document Request No. 33:**

Facebook objects to this request on the basis that it is overly broad and unduly burdensome, seeks information irrelevant to the litigation and not reasonably calculated to lead to the discovery of admissible evidence, and calls for the production of documents protected by the attorney-client privilege and work product doctrine.

Dated: June 8, 2010

COOLEY LLP

MICHAEL G. RHODES (116127)  
WHITTY SOMVICHIAN (194463)  
PETER M. COLOSI (252951)

BY: /s/ Whitty Somvichian  
WHITTY SOMVICHIAN

Attorneys for Defendant  
FACEBOOK, INC.

# **EXHIBIT D**



Peter M. Colosi  
(415) 693-2130  
pcolosi@cooley.com

VIA EMAIL JSHUB@SEEGERWEISS.COM AND MAIL

January 28, 2011

Jonathan Shub  
SEEGER WEISS LLP  
1515 Market Street, Suite 1380  
Philadelphia, PA 19102

**RE: In re Facebook PPC Advertising Litigation**  
**Case No.: 09-03043 JF**

Dear Jonathon:

This letter responds to yours of January 13, 2011 regarding ongoing discovery issues.

You state in your letter that plaintiffs believe there is an "impasse" as to "categories 1, 2, 3, 5 and 13" as identified in your November 30, 2010 email and that you intend to file a motion to compel as to those categories of documents. We disagree that an impasse exists and do not believe there is a ripe dispute appropriate for a motion to compel.

Category 1 was a request for "Facebook WIKI, as it relates to Advertising Sales, Click Filters and Click Quality, including all hyperlinks to documents referenced on the WIKI." Category 13 was a request for "All versions of the click filtering overview document, including documents identified in hyperlinks." To clarify, the "click filtering overview document" is the "WIKI". Facebook has now produced all historical versions of the click filtering overview wiki, including the responsive links from the wiki itself. To the extent the "impasse" you reference in your letter regards the fact that these documents were produced via the WatchDox system, you have failed to identify any way that the method of production prejudices your clients. The current production allows you, your staff, and your experts full access to review these documents. While the printing feature is disabled, this does not impact your review of the documents and is a necessary protection to safeguard against inadvertent disclosure of Facebook's highly-sensitive click-filtering information. Further, you have previously noted that the system potentially gives Cooley access to information on who has reviewed the document. We have not availed ourselves of this feature and as an additional accommodation have disabled the system so that no one at Cooley will receive any notifications on who has accessed the document. Last, we are currently in the process of correcting the orientation of all documents on the system to address the issue you noted.

Category 2 was a request for "Internal communications, including emails and instant messages, relating to click quality, legal or valid or illegal or illegal clicks, refunds or credits relating to click quality, and the creation or modification of click filters." We stated in our December 17, 2010 letter to you that we are currently reviewing and expect to produce by the end of January internal communications pertaining to the list of witnesses you identified in the December 3,



Jonathan Shub  
January 24, 2011  
Page Two

2010 Notice of Deposition: Lexa Pope, Rebecca Sawyer, Kirsten Bury, Kasey Galang, Pierre Moreels, David Fischer and Karl Voskuil. While we are willing to confer on potential additional custodians, we are under no obligation to complete the entire production of potentially relevant documents from all custodians before the class certification process. Indeed, on September 17, 2010, the Court made clear that "there is a strong preference for focusing on [class] certification issues" during this stage of discovery.

Category 3 was a request for documents relating to the "Ticket Processing System". Category 5 was a request for documents relating to "Click Quality Investigations". Both categories of documents were produced on December 14, 2010 in Facebook's seventh document production. To the extent the "impasse" you reference in your letter refers to the form of this production, you have again failed to identify any way that form prejudices your clients. Those documents could not be produced in native format as they were maintained by Facebook in a proprietary system. They were produced in searchable .pdf format as that was the most user-friendly format available. We do not believe the redactions made should have any effect on plaintiffs' ability to identify and review the particular emails associated with a particular complaint. Notwithstanding the redactions made to protect our advertisers' privacy, each email will still have specific information tying it to other emails referencing the same complaint. Thus, the private information redacted from the document in no way prejudices plaintiffs.

Your letter also seeks to clarify (by simply referring us to deposition testimony) your request for documents in categories 4 and 12 of your prior email.

Category 4 relates to "Site code and database that contains and tracks changes to the FAQs and other reports provided to advertisers." We have already provided the available information showing the text of prior versions of the FAQs and Help Center pages related to Facebook's click filtering systems, including the web pages identified in the complaint. If you can identify a deficiency in our production, or if there are other web pages you believe are relevant, please bring that to our attention.

Category 12 relates to "Code History relating to click filtering." Please see above for our response to your request for Categories 1 and 13; we have already produced all versions of the documentation on the wiki that set forth and explains Facebook's click filtering systems and a full day of testimony from a Facebook engineer on the filters. Production of the proprietary source code implementing the filters, if even possible, would be tremendously burdensome and offer little to no additional value.

We will respond separately regarding the deposition issues you raised and regarding the deficiencies in plaintiffs' discovery responses.



Jonathan Shub  
January 24, 2011  
Page Three

Please let me know if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter M. Colosi".

Peter M. Colosi  
PMC/pem

cc: Whitty Somvichian  
1207227 v1/SF